

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

<p>Affordable Naturals, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>Designing Ducks, Inc.,</p> <p style="text-align: center;">Defendant.</p>	<p>Court File No.: _____</p> <p style="text-align: center;">COMPLAINT AND DEMAND FOR JURY TRIAL</p>
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Plaintiffs, Affordable Naturals, LLC, by their undersigned attorneys, Christensen Law Office PLLC, for their Complaint allege as follows:

I. PRELIMINARY STATEMENT

1. This is an action for federal trademark infringement and unfair competition under Section 43 of the Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C. §§ 1125 and for substantial and related claims of unfair competition, deceptive trade practices, tarnishment, and injury to business reputation under the state and common laws of the State of Minnesota.
2. Affordable Naturals, LLC (“Affordable Naturals”) is the registrant of the SIMPLY® mark and by virtue of its registration with the United States Patent and Trademark Office is afforded all of the benefits derived from such registration.

II. THE PARTIES

3. Plaintiff Affordable Naturals is a Minnesota Limited Liability Company, with

principal place of business 6401 W. 106th Street, Bloomington Minnesota 554338.

4. Plaintiff is the owner of the federal registration for the SIMPLY® trademark for personal care products, namely, lip balms, lip glosses, lip shimmers and other lip-related products. Plaintiff claims rights in the SIMPLY® mark for lip balms, lip glosses, lip shimmers and other lip-related products.

5. Based upon information and belief, Defendant Designing Ducks, Inc. (“Designing Ducks”) is a corporation that is incorporated in the state of Pennsylvania, with a principal address located at 771 5th Avenue, King of Prussia, PA 19406. Designing Ducks is the owner of a lip balm product line bearing the appellation of source of “Simply Fresh.”

III. JURISDICTION AND VENUE

6. This action is for damages and injunctive relief for violations of the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, as a result of Defendant’s infringement of Affordable Naturals’ rights in the SIMPLY® mark, statutory and common law unfair competition, and state law deceptive trade practice.

7. This Court has jurisdiction under Section 39 of the Lanham Act, 15 U.S.C. § 1121, under 28 U.S.C. §§ 1338(a) and 1338(b), and under principals of supplementary jurisdiction.

8. This Court has personal jurisdiction over Defendant because Defendant does business in and/or has substantial contact with and/or may be found in the District of Minnesota and a substantial portion of the events at issue have arisen and/or will arise in this judicial district

IV. FACTS

Affordable Naturals is the Owner of the SIMPLY® Mark, Which Has Significant Appurtenant Goodwill in the Eyes of the Relevant Consumer

9. Affordable Naturals and its predecessors have used lip care and lip-related products under the SIMPLY® Mark continuously in interstate commerce since at least as early as August 1, 2009.

10. Plaintiff Affordable Naturals is the owner of the following trademark registrations for the SIMPLY® mark, which is registered on the Principal Register of the United States Patent and Trademark Office:

Trademark	Registration No.	Registered Goods
SIMPLY	3935337	Personal care products, namely lip balm, lip shimmers and sun block preparations

(USPTO registration of the SIMPLY® mark is attached as **Exhibit A.**)

11. Plaintiff has undergone significant expense developing, marketing, policing, and maintaining the SIMPLY® brand and appurtenant goodwill since 2009. Plaintiff has sold millions of units of its branded lip balms, lip glosses, lip shimmers and other lip-related products since 2009 through distribution relationships with Walgreens, Target, and other national retailers. Since 2009, it has expended over one million dollars in product development, marketing, and legal services to develop, grow, and protect its SIMPLY® mark.

12. Affordable Naturals is a leading manufacturer, marketer, distributor, and seller of natural, organic, and environmentally-friendly lip balms, lip glosses, lip shimmers, and other lip-related products.

13. Affordable Naturals sells lip balms, lip glosses, lip shimmers, and lip-related products under the SIMPLY® mark.

14. Affordable Naturals manufactures, markets, distributes, and sells its products under the prolific SIMPLY® brand through various channels of trade including convenience stores, retailers, branded national chains, online sellers such as Amazon.com, and direct-to-consumer online sales.

15. Affordable Naturals' mission is as follows: "We bring organic products back down-to-earth by providing the first all-natural, premium quality, U.S.-made, eco-conscious personal care products offered on the market at a reasonable rate."

16. Affordable Naturals' goods consist of natural and organic ingredients, such as olive oil and beeswax. Plaintiff maintains its standards to make products that never contain parabens, sulfates, synthetic dyes, synthetic fragrances, phthalates or GMOs. Plaintiff maintains some of its goods to meet certain quality standards to be certified "USDA ORGANIC."

17. Affordable Naturals has also spent extensive resources and expense developing trade dress that speaks to its mission and the "natural" and "organic" nature of its goods, which is as follows:



Simply®

18. Affordable Naturals also markets and sells its goods on the Internet. Affordable Naturals' website for the SIMPLY® brand goods is located at the <simplylipbalm.com>

domain name. (Printouts of the Simply website are attached as **Exhibit B.**)

19. Because of Affordable Naturals’ substantial efforts of brand development, the relevant consuming public has an expectation of certain quality appurtenant to the SIMPLY® mark. This expectation of quality has inured to the SIMPLY® mark as secondary meaning in the form of significant and extensive goodwill, distinguishing Affordable Naturals’ lip balms, lip glosses, lip shimmers, and lip-related products from those of their competitors.

Defendant’s Goods Infringe on Affordable Naturals’ Right in the SIMPLY® Mark and Constitute Unfair Competition.

20. Despite having actual knowledge of Affordable Naturals’ exclusive rights in the SIMPLY® mark, Defendant willfully infringed Affordable Naturals’ rights in the SIMPLY® mark and violated Affordable Naturals’ intellectual property rights through the marketing, promotion, advertisement and sale of its own line of beauty, skin care and personal care products including lip balms, lip glosses, lip shimmers and other lip-related products in connection with the designation “SIMPLY FRESH” (the “Infringing Mark”), a designation almost identical to Affordable Naturals’ SIMPLY® mark.

21. Defendant manufactures, markets, distributes and sells its line of lip balms, lip shimmers, lotions, hand sanitizers, and sunscreens in connection with the Infringing Mark (collectively, the “Infringing Products”) through different trade channels including stores, direct sales, and internet sales. (Photos of Defendant’s goods sold under the “SIMPLY FRESH” designation are attached as **Exhibit C.**)

22. Defendant had prior knowledge of Affordable Naturals’ SIMPLY® mark.

Defendant intended to trade upon the coattails of Affordable Naturals' goodwill.

23. Defendant and Affordable Naturals share some of the same manufacturing contacts for their lip care products, and is aware of Affordable Naturals' products because of these mutual contacts.

24. With actual knowledge of a likelihood of confusion with Affordable Naturals' mark by virtue of Affordable Naturals' registration of the SIMPLY® mark with the USPTO and through its mutual manufacturing contacts with Affordable Naturals', Defendants continued to use the SIMPLY FRESH mark.

25. Defendant's actions are clearly intended to confuse consumers as to the source or origin of their SIMPLY FRESH products and create a false association between Defendant's SIMPLY FRESH product and Affordable Naturals' SIMPLY® brand product in the minds of the consuming public.

Defendant's Misappropriation of Affordable Naturals' Intellectual Property is Willful

26. Defendant adopted and commenced use of, uses and plans to continue to use, the Infringing Mark with the intent and purpose of trading upon the extensive goodwill built up by Affordable Naturals in its prolific SIMPLY® mark and to reap the benefits of the years of effort invested by Affordable Naturals and its predecessors to create the SIMPLY® mark as a symbol the source or origin for Affordable Naturals' goods in the eyes of the consuming public.

27. Defendant has engaged and continue to engage in deliberate and willful infringement designed to confuse customers as to the source or origin of the Infringing Products and trade upon Affordable Naturals' valuable intellectual property, goodwill

and reputation.

28. Defendant's marketing, promotion, distribution and sale of the Infringing Products commenced after the following: (1) Affordable Naturals' and its predecessors' prior use of the SIMPLY® mark; and (2) Affordable Naturals' and its predecessors' federal trademark registration of the SIMPLY® mark.

29. Defendant has refused to cease their infringing conduct despite being put on notice of Affordable Naturals' exclusive rights in the SIMPLY® mark.

30. Prior to the filing of this Complaint, Affordable Naturals' sent a demand letter to Defendant, advising Defendant of Affordable Naturals' exclusive rights in the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products and that Defendant's use of SIMPLY FRESH in connection with these products constitutes trademark infringement and unfair competition in violation of federal, state and common law.

31. To date, Defendant has not responded to that demand letter, and continues to promote and foster consumer confusion and unfairly compete with Affordable Naturals by marketing, promoting, advertising, and selling its lip balms, bath and body goods, and body oils under the confusingly similar designation "SIMPLY FRESH."

32. Despite Affordable Naturals' assertions of its rights and demands, Defendant has not ceased its illegal marketing, promotion, distribution, and sale of the Infringing Products.

33. Defendant has adopted, commenced use of and is using and planning to market, promote, advertise, and sell the infringing SIMPLY FRESH products with the intent and

purpose of trading on the extensive goodwill built up by Affordable Naturals in the federally registered and exclusive SIMPLY® mark and to reap the benefits of years of effort and investment by Affordable Naturals to create public recognition of Affordable Naturals' SIMPLY® mark and the products sold appurtenant to that mark.

34. Defendant's conduct is intentionally fraudulent, malicious, willful, and wanton.

35. Defendant's acts of imitation have been committed with knowledge that such imitation is intended to be used to cause confusion or mistake, or to deceive.

V. CAUSES OF ACTION

COUNT I

Federal Trademark Infringement (15 U.S.C. § 1114(1))

36. Affordable Naturals repeats and realleges each and every allegation contained in the above paragraphs.

37. Defendant's actions infringe Affordable Naturals' exclusive rights in its federally registered SIMPLY® mark for lip balms, lip glosses, lip shimmers and other lip-related products.

38. Defendant's conduct is likely to cause confusion, mistake, or deception and constitutes trademark infringement, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

39. Defendant's actions are with full knowledge of Affordable Naturals' long and extensive prior use of the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products.

40. Defendant's conduct is causing immediate and irreparable injury to Affordable

Naturals and to its goodwill and reputation and will continue both to damage Affordable Naturals and to confuse the public unless enjoined by this Court. Affordable Naturals has no adequate remedy at law.

COUNT II
Federal Unfair Competition (15 U.S.C. § 1125(a))

41. Affordable Naturals repeats and realleges each and every allegation contained in the above paragraphs.

42. Affordable Naturals is the valid owner of the SIMPLY® mark, which is entitled to full recognition and protection under federal trademark law.

43. Defendant's actions constitute false designation of origin and are likely to cause confusion, mistake, or deception among the consuming public.

44. Defendant's actions have been undertaken with full knowledge of Affordable Naturals' long and extensive prior use of the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products.

45. Defendant's acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

46. Defendant's conduct has caused and will continue to cause irreparable injury to Affordable Naturals unless enjoined by this Court. Affordable Naturals has no adequate remedy at law.

COUNT III
Common Law Unfair Competition

47. Affordable Naturals repeats and realleges each and every allegation contained in the above paragraphs.

48. Defendant was aware of Affordable Naturals' and its successor's prior use of the SIMPLY® mark, and undertook the actions described in this complaint in disregard of Affordable Naturals' rights in the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products.

49. Defendant's infringing conduct has resulted in the misappropriation of and trading upon Affordable Naturals' goodwill and business reputation at Affordable Naturals' expense and at no expense to Defendant. The effect of Defendant's misappropriation of the goodwill symbolized by Affordable Naturals' SIMPLY® mark is to unjustly enrich Defendant, damage Affordable Naturals and confuse and deceive the public.

50. Defendant's conduct constitutes unfair competition with Affordable Naturals, all of which has caused and will continue to cause irreparable injury to Affordable Naturals goodwill and reputation in the marketplace unless enjoined by this Court. Affordable Naturals has no adequate remedy at law.

COUNT IV
Deceptive Trade Practice
(Minn. Stat. § 325D.44)

51. Affordable Naturals repeats and realleges each and every allegation contained in the above paragraphs.

52. By reason of the acts and practices set forth above, Defendant has and is engaged

in deceptive trade practices or acts in the conduct of a business, trade, or commerce, or furnishing of goods and services, in violation of Minn. Stat. § 325D.44.

53. The public is likely to be damaged as a result of the deceptive trade practices or acts engaged in by the Defendant.

54. Unless enjoined by the Court, Defendant will continue these deceptive trade practices or acts, deceiving the public and causing immediate and irreparable damage to Affordable Naturals. Affordable Naturals has no adequate remedy at law.

VI. RELIEF SOUGHT

WHEREFORE, Affordable Naturals prays for judgment against Defendant as follows:

1. Permanently enjoining and restraining Designing Ducks, its officers, agents, servants, employees, successors, and assigns and all of those in active concert or participation with them, from:

- a) Using any false description or designation of origin or representation which can, or is likely to, lead the trade or public, or individual members thereof, to believe that any product manufactured, imported, advertised, distributed and/or sold by Affordable Naturals is in any manner associated or connected with Designing Ducks or is sold, licensed, sponsored, or approved by Affordable Naturals; and
- b) Engaging in any other activity constituting an infringement of Affordable Naturals' trademark rights.

2. Entering an order:

- a) Finding that Designing Ducks has infringed upon Affordable Naturals' trademark rights;
- b) Directing that Designing Ducks turn over for impoundment and eventual destruction all products, packages, and material in their possession or control which violate Affordable Naturals' trademark rights;
- c) Directing Designing Ducks to recall all of its products infringing Affordable Naturals' trademark rights;
- d) Directing Designing Ducks to, within thirty days after service of notice of the entry of judgment, file with the Court and serve upon Affordable Naturals' counsel a written report under oath setting forth in detail the manner in which Designing Ducks has complied with the Court's order.
- e) Directing that Designing Ducks be required to pay Affordable Naturals actual damages of all of Designing Ducks's profits and Affordable Naturals' lost profits sustained as a consequence of Designing Ducks's infringement of Affordable Naturals' trademark;
- f) Awarding to Affordable Naturals the costs of this action, together with reasonable attorneys' fees; and
- g) Awarding to Affordable Naturals such further relief as the Court may deem just and proper.

VII. JURY DEMAND

Affordable Naturals requests a trial by jury on all triable issues alleged in this complaint.

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